

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

TO-DO DEVELOPMENT, LLC

Debtor.

HEARING DATE: FEBRUARY 11, 2015
HEARING TIME: 10:30 AM
HEARING LOCATION: ALBANY, NEW YORK

CASE NO. 14-12210
CHAPTER 11

OBJECTION TO CONFIRMATION OF PLAN

OBJECTION TO PLAN, by Troy All State Heating and Plumbing Co., Inc. (hereinafter referred to as "Troy All State") a secured creditor in the amount of \$13,812.50 plus additional interest since the filing of bankruptcy by virtue of a mechanic's lien filed on debtor's real estate located at 41-43 Third Street, Troy, New York. A copy of the filed mechanic's lien and affidavit of service are attached as Exhibit 1.

Creditor by its attorneys, Marinstein & Marinstein, Esqs., PLLC objects to confirmation of the proposed plan filed and presented herein by debtor dated December 29, 2014 upon the following grounds and pursuant to Sections 1129(a)(11), 1129(a)(7)(A)(ii) and 1129(a)(3) of the United States Bankruptcy Code for the following reasons stated:

(1) Debtor has not demonstrated the proposed plan is feasible as:

(a) It is unclear whether debtor has authority to use the monthly rental payments from O'Brien's Public House Inc. to fund the plan and said rental payments, on information and belief are debtor's only source of income. The first mortgagee is claiming the rental payments are not property of the bankruptcy estate as debtor executed an assignment of rents.

(b) Debtor's proposed plan indicating it will obtain money from refinance of the real property or sale of the real property to make the balloon payment at the end of five years is speculative at best.

(c) On information and belief, the real property in question

had been abandoned and was an eye sore for years. At the November 3, 2014 Meeting of Creditors, Ms. O'Brien advised 25% of the project was completed. The project includes a restaurant, a ballroom and approximately fourteen residential units. Ms. O'Brien stated about \$320,000.00 was spent to stabilize the building. Being that this is an old building, one has to expect regular maintenance issues to occur. On information and belief, debtor's proposed plan has not demonstrated cash flow that would allow for maintenance contingencies.

(d) Debtor is relying on the real property having a value of \$550,000.00 but the first mortgage holder's appraisal shows a value of \$250,000.00.

(e) Terry M. O'Brien previously represented that she is the owner of O'Brien's Public House, Inc. and debtor To-Do Development, LLC. That being the case, the proposed plan is even more risky as if one entity fails, there is a good possibility that the other will also fail. In the event the restaurant cannot make a rental payment, fails to book parties, etc., debtor will not have rental income to make the plan payments. In the event the restaurant fails, debtor may not have the income to cover real property tax payments and utility payments which the restaurant was supposed to cover.

Based on the above, debtor has not shown that confirmation is not likely to be followed by liquidation or further financial reorganization. As a result, said proposed plan is not confirmable pursuant to 11 USC Section 1129(a)(11).

(2) Debtor has not demonstrated the plan will allow Troy All State to receive or retain under the proposed plan a value of its secured interest at the effective date of the plan that is not less than the amount Troy All State would receive if debtor liquidated {11 USC Section 1129(a)(7)} as:

(a) Debtor has not offered Troy All State adequate protection payments to protect Troy All State's interest in the real property. Debtor claims the value of the real property should protect Troy All State's interest.

However, on information and belief, debtor is not generating enough income to maintain such a large building. Also as previously set forth, there is a dispute as to what is the fair market value of the property. Troy All State being a secured creditor in third position has more at risk if the property is not the value claimed by debtor and/or the property is not adequately cared for as the two prior mortgages will be paid prior to Troy All State being paid. Thus, any decrease in value of the real property would drastically change Troy All State's position. In order to maintain the value of its secured status, Troy All State should be given reasonable adequate protection payments.

(b) Minimal proposed monthly plan payments of \$74.15 to Troy All State spread out over five years increases the risk that the Troy All State's value would be diminished after the effective date of the plan unless adequate protection payments are provided.

(3) Debtor has not demonstrated the plan has been proposed in good faith and not by any means forbidden by law {11 USC Section 1129(a)(3)} as:

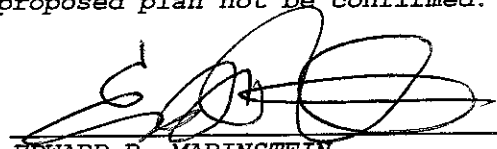
(a) On information and belief, debtor misrepresented and failed to disclose to the first mortgagee that a purchase money mortgage had already been granted by debtor to the seller of the property.

(b) The Disclosure Statement (II B) states Terry O'Brien is not an owner of O'Brien's Public House Inc. which is wholly owned by Alisandra O'Brien (Terry O'Brien's daughter). However, on various occasions, Terry O'Brien said she owned said entity. Attached please find Exhibit 2 being a copy of a redacted check issued by O'Brien's Public House signed by Terry O'Brien that was returned for insufficient funds.

(4) Based on the above, the proposed Chapter 11 plan is not feasible, there has been no demonstration that Troy All State's security interest is adequately protected and there is some indication that the plan has not been proposed in good faith.

WHEREFORE, creditor Troy All State by its attorneys, Marinstein & Marinstein, Esqs., PLLC move that said proposed plan not be confirmed.

DATED: FEBRUARY 3, 2015



EDWARD R. MARINSTEIN
BAR ROLL NO. 508224
MARINSTEIN & MARINSTEIN, ESQS., PLLC
ATTORNEYS FOR CREDITOR
TROY ALL STATE HEATING
AND PLUMBING CO., INC.
22 FIRST STREET - P.O. BOX 155
TROY, NEW YORK 12181-0155
TELEPHONE: (518) 274-5034

TO: TO-DO DEVELOPMENT, LLC
DEBTOR
43 THIRD STREET
TROY, NEW YORK 12080

CHRISTIAN H. DRIBUSCH, ESQ.
ATTORNEY FOR DEBTOR
THE DRIBUSCH LAW FIRM
1001 GLAZ STREET
EAST GREENBUSH, NEW YORK 12061

UNITED STATES TRUSTEE
74 CHAPEL STREET
ALBANY, NEW YORK 12207

HON. ROBERT E. LITTLEFIELD, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE
NORTHERN DISTRICT OF NEW YORK
JAMES T. FOLEY COURTHOUSE
445 BROADWAY
ALBANY, NEW YORK 12207

To the Clerk of the County of Rensselaer and all others who it may concern:

PLEASE TAKE NOTICE, that Troy All State Heating and Plumbing Co., Inc., as lienor has and claims a mechanic's lien on the real property hereinafter described, as follows:

- (1) The name of the lienor is Troy All State Heating and Plumbing Co., Inc. and its address is 3165 Sixth Avenue, Troy, New York 12180 being a corporation incorporated under the laws of New York State whose business address and place of business is at 3165 Sixth Avenue, Troy, New York 12180.
- (2) The name and address of lienor's attorney, Marinstein & Marinstein, Esqs., PLLC, 22 First Street, P.O. Box 155, Troy, New York, 12181-0155.
- (3) The Owner of the real property against whose interest a lien is claimed is on information and belief is To-Do Development LLC and the interest of the Owner as far as known to the lienor is in fee simple absolute.
- (4) The name of the person by whom the lienor was employed Terry M. O'Brien and/or To-Do Development LLC
The name of the person to whom the lienor furnished or is to furnish materials or for whom the lienor performed or is to perform labor is Terry M. O'Brien and/or To-Do Development LLC
The name of the person with whom the contract was made is Terry M. O'Brien and/or To-Do Development LLC
The name of the person for whom professional services were rendered is N/A.
- (5) The labor performed was installation of 2 - 3 ton Carrier ductless heat pumps and 1 - 2½ ton Carrier ductless heat pump, of the agreed value of \$3,199.00
The material furnished was 2 - 3 ton Carrier ductless heat pumps and 1 - 2½ ton Carrier ductless heat pump plus duct work and materials to install at the agreed value of \$10,301.00
The materials actually manufactured for but not delivered to the real property are N/A.
The agreed price and value of the labor performed is \$ 3,199.00
The agreed price and value of the material furnished is \$10,301.00
The agreed price and value of the material actually mfd. for but not delivered to the real property is \$N/A.

	Total Agreed Price and Value	<u>\$13,500.00</u>
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- (6) The amount unpaid to the lienor for said labor performed is \$ 3,199.00
The amount unpaid to the lienor for said material furnished is \$ 9,301.00
The amount unpaid to lienor for material actually mfd. for but not delivered to the real property is \$N/A.

	Total Amount Unpaid	<u>\$12,500.00</u>
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The total amount claimed for which this lien is filed is \$12,500.00
Plus Interest at 18% per annum from February 20, 2014
- (7) The time when the first item of work was performed was December 4, 2013
The time when the first item of material was furnished was November 23, 2013
The time when the last item of work was performed was February 20, 2014
The time when the last item of material was furnished was January 24, 2014
- (8) The property subject to the lien is situated in the City of Troy, County of Rensselaer and State of New York being 41-43 Third Street, Tax Map No. 101.53-8-5 (location of O'Briens Public House).
- (9) Said Troy All State Heating and Plumbing Co., Inc. lienor has and claims a mechanic's lien for the agreed price and/or value of such labor and/or materials upon said real property, improved and to be improved thereby, and upon such improvements, for the amount unpaid as aforesaid, in pursuance of the statute in such case and provided.

That said labor and materials were performed and furnished for and used, and the professional services rendered were used, in the improvement of the real property hereinbefore described. That 8 months (4 months if a single family dwelling) have not elapsed dated from the last item of work performed, or from the last items of materials furnished, or since the completion of the contract, or since the final performance of the work, or since the final furnishing of the materials for which this lien is claimed.

Troy All State Heating and Plumbing Co., Inc.

Dated this 24th day of April, 2014.

By:

Nicolino Casale
Nicolino Casale
President
County Clerk's Office
Apr 24, 2014 02:18P
Rensselaer County
Frank J. Merola

EXHIBIT-1

STATE OF NEW YORK)
COUNTY OF RENSSELAER) ss.:

Nicolino Casale, being duly sworn, deposes and says that deponent is the President of Troy All State Heating and Plumbing Co., Inc. herein, that deponent has read the foregoing notice of lien and knows the contents thereof, and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes it to be true. The reason why this verification is made by deponent is that deponent is an officer, to wit, the President of Troy All State Heating and Plumbing Co., Inc. which is a New York corporation and deponent is familiar with the facts and circumstances herein.

The sources of deponent's information and the grounds of deponent's belief as to all matters not herein stated upon deponent's knowledge are as follows: Business records of lienor.

Sworn to before me this
24th day of April, 2014.

Notary

EDWARD R. MARINSTEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02MA4856913
QUALIFIED IN ALBANY COUNTY
COMMISSION EXPIRES 03/24/2018

Nicolino Casale
Nicolino Casale
President

MECHANIC'S LIEN

Troy All State Heating and Plumbing Co., Inc. Claimant
Business Address:
3165 Sixth Avenue, Troy, New York 12180

-against-

To-Do Development LLC, Owner
Terry M. O'Brien and/or To-Do Development LLC, Contractor

NOTICE OF LIEN

Amount, \$12,500.00
Filed: April 24, 2014

Premises known as being situate in the City of Troy, County of Rensselaer, State of New York being 41-43 Third Street, Tax Map No. 101.53-8-5 (location of O'Briens Public House).

Marinstein & Marinstein, Esqs., PLLC
Attorneys for Lienor
Office and P.O. Address
22 First Street - P.O. Box 155
Troy, New York 12181-0155
Telephone: (518) 274-5034

AFFIDAVIT OF MAILING

Troy All State Heating and Plumbing Co., Inc., Lienor
To-Do Development LLC, Owner
Terry M. O'Brien and/or To-Do Development LLC, Contractor

STATE OF NEW YORK)
COUNTY OF RENSSELAER) SS.:
CITY OF TROY)

I, Mary Anne McHarg, being duly sworn deposes and says that deponent is over 18 years of age and reside at Watervliet, New York.

On April 25, 2014 I served the within Mechanic's Lien by depositing a true copy thereof enclosed in a post-paid wrapper by certified mail in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, address to each of the following persons at the last known address set forth after each name:

To-Do Development LLC
Owner/Contractor
P.O. Box 1
Troy, New York 12182

Certified Article Number

7196 9008 9111 7901 4173

SENDERS RECORD

To-Do Development LLC
Owner/Contractor
O'Briens Public House
43 Third Street
Troy, New York 12180

Certified Article Number

7196 9008 9111 7901 4203

SENDERS RECORD

Terry M. O'Brien
Contractor
P.O. Box 1
Troy, New York 12182

Certified Article Number

7196 9008 9111 7901 4180

SENDERS RECORD

Terry M. O'Brien
Contractor
O'Briens Public House
43 Third Street
Troy, New York 12180

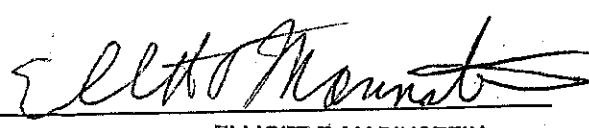
Certified Article Number

7196 9008 9111 7901 4197

SENDERS RECORD

Sworn to before me this
28th day of April, 2014.


Mary Anne McHarg


ELLIOTT F. MARINSTEIN
NOTARY PUBLIC, State of New York
No. 02MA7718015
Qualified in Rensselaer County

ELLIOTT F. MARINSTEIN
NOTARY PUBLIC, State of New York
No. 02MA7718015
Qualified in Rensselaer County
Commission Expires 08/31/20

ELLIOTT F. MARINSTEIN
NOTARY PUBLIC, State of New York
No. 02MA7718015
Qualified in Rensselaer County
Commission Expires 08/31/20

MARINSTEIN & MARINSTEIN, ESQS., PLLC
ATTORNEYS AT LAW

22 FIRST STREET - P.O. BOX 15
TROY, NEW YORK 12181-0155
TELEPHONE: (518) 274-5034
FAX: (518) 274-5039

Re Troy All State Heating and Plumbing Co., Inc., Lienor April 29, 2014
To-Do Development LLC, Owner
Terry M. O'Brien and/or To-Do Development LLC, Contractor

Rensselaer County Clerk
105 Third Street
Troy, New York 12180

(PLEASE REFER TO THE ITEMS CHECKED BELOW:)

1. Claim acknowledged with thanks and accepted on terms indicated.
2. This matter in Bankruptcy Assignment Receivership
Probate.
3. Send one copy of debt and power of attorney with itemized
invoices attached
4. Proof of debt re Troy All State Heating and Plumbing Co., Inc., Lienor
5. Debtor promises To-Do Development LLC, Owner
6. Have debtor's c Terry M. O'Brien and/or To-Do Development LLC, Contractor
on
7. Debtor claims d Filed for Record in: Rensselaer County
check. Recorded At: May 01, 2014 04:22P
Type: Mechanics Lien Affidavit
Doc #: 00454942
Amount: 5.00
Receipt #: 903360
8. Debtor disputes Affidavit of Mailing (Mechanic's Lien)
debt or promise
9. Suit recommend contingent sui
in which cred
charged.)
10. Suit has been must be filed
direct payment
11. Debtor has fi Date of Filing 05/01/2014
12. Judgment ente payment not m
13. Execution in hands of officer.
14. No change in status. Advance file to something definite then.

RECEIVED
MAY 16 2014

BY: _____

REMARKS: Enclosed please find Affidavit of Mailing (of Mechanic's Lien) for filing regarding the above captioned matter along with our check in the amount of \$5.00 to cover the fee. Please return the enclosed postal card indicating the date of filing. A copy of the Mechanic's Lien filed in your office on April 24, 2014 is attached. Thank you.

MAM

04/17/2014

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

RETURN REASON - A NOT SUFFICIENT FUNDS

ORIGINAL

NSF

O'BRIENS PUBLIC HOUSE
PO BOX 1
TROY, NY 12180
918-776-1341

1569
80-70442223

April 9th 14

Pay to the order of Troy Allstate \$ 500.00

Five Hundred 00/100 Dollars

FRONT MAGARA

3: Bob Hunter T. O'Brien

EXHIBIT-2